

Information-Sharing Protocol between NSW Privacy Commissioner and Cyber Security NSW

Purpose

This information sharing protocol (the Protocol) sets out the arrangements for sharing information between the NSW Privacy Commissioner and Cyber Security NSW in the context of the NSW mandatory notification of data breach scheme.¹

Arrangements for sharing information by the IPC and Cyber Security NSW

1. Introduction

The following have an impact on information-sharing arrangements under the Protocol:

- *Privacy and Personal Information Protection Act 1998* (NSW) (PIIP Act)
- *NSW Government Cyber Security Policy* (the Policy)

1.1. PIIP Act

Section 67 of the PIIP Act prevents the Privacy Commissioner or staff of the Privacy Commissioner from disclosing information obtained in the course of his/ her office unless the disclosure is made:

- with the consent of the person the subject of the information, or
- for the purpose of discharging functions of the Privacy Commissioner or member of staff under the PIIP Act or any other Act.

The Privacy Commissioner's general functions are set out in section 36 and include, relevantly:

- to promote the adoption of, and monitor compliance with, the information protection principles (IPPs)
- to receive, investigate and conciliate complaints about privacy related matters

¹Established under Part 6A of the Privacy and Personal Information Protection Act 1998 (NSW).

- to conduct such inquiries, and make such investigations, into privacy related matters as the Privacy Commissioner thinks appropriate

Section 37 of the PPIP Act² provides, relevantly, that the Privacy Commissioner may, in connection with the exercise of the Privacy Commissioner's functions, require any person or public sector agency to give information (i.e. statement of information, document or thing or copy of same). The requirement to give information to the Privacy Commissioner under this section must be in writing, specify the information, document or thing required and the time and manner for complying.

Section 59ZF(1) of the PPIP Act provides that the Information and Privacy Commission (IPC) is not required to comply with certain information protection principles (IPPs) or health privacy principles (HPPs) in relation to information disclosed by Cyber Security NSW to the IPC for the purpose of Part 6A.³ Section 59ZF(2) of the PPIP Act provides that the IPC is not required to comply with certain IPPs or HPPs if the information is disclosed to Cyber Security NSW to enable Cyber Security NSW to exercise its functions.⁴

Section 59ZG(1) provide that Cyber Security NSW is not required to comply with certain IPPs or HPPs in relation to information disclosed by the IPC to Cyber Security NSW for the purpose of Part 6A.⁵ Section 59ZG(2) provides that Cyber Security NSW is not required to comply with certain IPPs or HPPs if the information is disclosed to the Privacy Commissioner to enable the Privacy Commissioner to exercise functions under Part 6A.⁶

1.2. NSW Cyber Security Policy

The Policy outlines the mandatory requirements to which all NSW Government Departments and Public Service Agencies must adhere, to ensure cyber security risks to their information and systems are managed. The Policy applies to all NSW Government Departments and Public Service Agencies (agencies) under Schedule 1 of the *Government Sector Employment Act 2013* (NSW). The policy provides for reporting requirements, including, relevantly that cyber security incidents are reported to Cyber Security NSW according to the NSW Cyber Security Response Plan.

² Note there is an equivalent provision in section 59 of the *Health Records and Information Privacy Act 2002* (NSW).

³ Principles under sections 9, 13, 14, or 17 of the PPIP Act and HPPs 3, 6, 7, or 10 contained within Schedule 1 of the HRIP Act.

⁴ Principles under sections 18 or 19 of the PPIP Act and HPP 11 contained within Schedule 1 of the HRIP Act.

⁵ Principles under sections 9, 13, 14 or 17 and HPPs 3, 6, 7, or 10 contained within Schedule 1 of the HRIP Act.

⁶ Principles under sections 18 or 19 of the PPIP Act and HPP 11 contained within Schedule 1 of the HRIP Act.

2. Arrangements for sharing information and inter-agency referral

2.3. Privacy Commissioner

Information may be shared by the Privacy Commissioner with Cyber Security NSW if it is for the purpose of discharging the Privacy Commissioner's functions under the PPIP Act. The Privacy Commissioner may share information obtained under the PPIP Act where, for example, it is for the purpose of the Commissioner's function of promoting/ monitoring compliance with the IPPs, receiving notifications under and investigating agency compliance with the mandatory notification of data breach scheme or for the purpose of the Commissioner's complaint handling and investigative functions.⁷

2.4. CSNSW

Cyber Security NSW is not established by statute, but is an office established with the NSW Department of Customer Service. It does not have general sharing arrangements permitted by statute. Section 59ZG provides Cyber Security NSW with exemptions from certain IPPs and HPPs to enable information sharing to occur for the purpose of the Privacy Commissioner's functions under Part 6A of the PPIP Act and to enable Cyber Security NSW to exercise its functions. Accordingly, under this Protocol, Cyber Security NSW agrees to refer reporting agencies to the Privacy Commissioner where the matter reported concerns the Privacy Commissioner's functions under the PPIP Act.

Arrangements to review the Protocol

The IPC and Cyber Security NSW will review the operation and effectiveness of the Protocol every two years, or such other period as may be agreed by them, and by a process agreed between the Privacy Commissioner and Cyber Security NSW.

Public availability of the Protocol

The Protocol is open access information under section 6 of the *Government Information (Public Access) Act 2009* and will be made publicly available free of charge on the websites of the IPC and Cyber Security NSW.

⁷ Note that Information that relates to the Office of the Privacy Commissioner's review, complaint handling, investigative and reporting functions is 'excluded information' under the *Government Information (Public Access) Act 2009* (NSW) (GIPA Act) and an access application cannot be made for excluded information under the GIPA Act. Further, there is a conclusive presumption of an overriding public interest against disclosure in respect of information that is excluded information of an agency, other than information that the agency. This conclusive presumption would apply if an access application were made to Cyber Security NSW for excluded information of the Office of the Privacy Commissioner.



Sonia Minutillo
Acting NSW Privacy Commissioner
NSW Information and Privacy Commission

Date: 22. 04. 2024



Tony Chapman
NSW Chief Cyber Security Officer
Cyber Security NSW

Date: 18. 04. 2024